

Attorney Docket T8466250US



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CRUPI, Frank

Application No.: 09/917,824

Filed: 07/31/2001

For: METHOD OF IN-SITU
REJUVENATION OF ASPHALT
PAVEMENT

Examiner: R. W. Addie

Group Art Unit: 3671

Allowed:

December 29, 2003

RECEIVED

JAN 12 2004

GROUP 3600

The Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF DECISION REFUSING TO
WITHDRAW HOLDING OF ABANDONMENT**

Sir:

The Applicant respectfully requests reconsideration of the Decision dated November 3, 2003, refusing to withdraw the holding of abandonment with respect to the above-mentioned patent application. In parallel, the Applicant respectfully renews its petition to withdraw the holding of abandonment, such renewed petition being submitted under separate cover.

FACTS

1. On November 3, 2003, the Patent Office mailed a Decision on Petition (a copy of which is attached), dismissing Applicant's petition under 37 CFR 1.181 to withdraw the holding of abandonment. The Decision on Petition dismissed the petition on the basis that the cover page of the facsimile transmission of the correspondence effecting the subject amendment did not contain a specific indication that, in fact, an amendment (response to an office action dated September 12, 2003) was being transmitted.

#10
Person
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3/2/04
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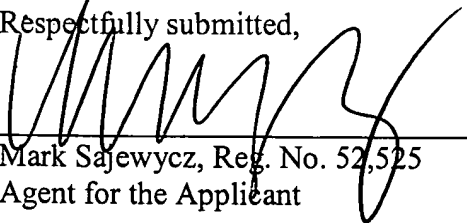
2. In response, the Applicant submits a renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, which is attached hereto and filed under separate cover. The renewed petition makes it clear that no indication as to the nature of the correspondence is, by legislation, required on the cover page of the facsimile transmission in order for the correspondence to be considered timely transmitted. The petition further establishes that the nature of the subject correspondence was, indeed, the response to the office action dated September 18, 2002, based upon, *inter alia*, a statement of the Agent for the Applicant, attesting on a personal knowledge basis as to the timely transmission of the subject correspondence. A copy of the sending unit's report confirming transmission is also used to support the agent's attestation.

RELIEF REQUESTED

The Applicant respectfully requests the Assistant Commissioner to reconsider and grant the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment. The Applicant further requests the Commissioner to restore the above-identified abandoned application to pending status since the Applicant has properly submitted the Response to the Office Action under 37 CFR 1.312.

Applicant's undersigned agent may be reached in our Toronto office by telephone at 416-862-5739. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

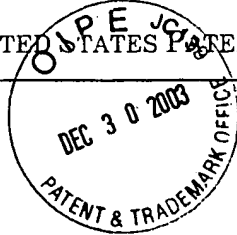


Mark Sajewycz, Reg. No. 52,525
Agent for the Applicant

Gowling Lafleur Henderson LLP
Commerce Court West, Suite 4900
Toronto, Ontario M5L 1J3
Canada



UNITED STATES PATENT AND TRADEMARK OFFICE



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Office of the Director
Group 3600

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NOV 10 2003

GOWLING LAFLEUR HENDERSON LLP
PATENT DEPARTMENT

Gowling Lafleur Henderson LLP
Suite 4900
Commerce Court West
Toronto ON M5L 1J3 CANADA

In re Application of
Frank Crupi
Application No. 09/917,824
Filed: July 31, 2001
For: METHOD OF IN-SITU
REJUVENATION OF ASPHALT
PAVEMENT

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is a decision on applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on June 4, 2003.

The petition is **DISMISSED**.

A review of the file record indicates that an Office action was mailed on September 18, 2002 wherein a three-month shortened statutory period for response was set. Since no response to the September 18, 2002 Office action was received the application was abandoned.

Petitioner requests withdrawal of the holding of abandonment on the basis that a response was allegedly timely filed. Petitioner alleges that a response was timely submitted via facsimile transmission on February 18, 2002 and submits a copy of an Auto-Reply Facsimile Transmission as provide proof of the timely submission.

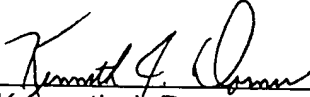
The evidence submitted as proof of filing the response is flawed. Specifically, the Auto-Reply Facsimile Transmission illustrates the cover page but the cover page does not properly indicate what was being transmitted. There is nothing on the Auto-Reply Facsimile Transmission that indicates an amendment to application to the present application was sent.

The application is being forwarded to Files Repository.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petition desire reconsideration, he should submit a renewed petition which addresses the deficiencies noted above.

Reconsideration Deadline
January 3, 2004

Telephone inquiries relative to this decision should be directed to Special Programs Examiner Kenneth Dorner at (703) 308-0866.


Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866

KJD/ekn 10/24/03



PTO/SB/21 (08-03)
Approved for use through 07/31/2006. OMB 0651-0031
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/917,824	
	Filing Date	07/31/2001	
	First Named Inventor	CRUPI, Frank	
	Art Unit	3671	
	Examiner Name	R.W. Addie	
Total Number of Pages in This Submission	28	Attorney Docket Number	T8466250US

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence	<input type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	1. REQUEST FOR RECONSIDERATION OF DECISION REFUSING 2. RENEWED PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Mark W. Sajewycz Reg No. 52,525
Signature	
Date	December 29, 2003

CERTIFICATE OF TRANSMISSION/MAILING		
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the		
Typed or printed name		
Signature		Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Attorney Docket T8466250US



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)		
	:	Examiner:	R. W. Addie
CRUPI, Frank)		
	:	Group Art Unit:	3671
Application No.: 09/917,824)		
	:	Allowed:	
Filed: 07/31/2001)		
	:		
For: METHOD OF IN-SITU)	December 29, 2003	
REJUVENATION OF ASPHALT)		
PAVEMENT)		

The Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Office of Petitions

**RENEWED PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW HOLDING
OF ABANDONMENT**

Sir:

The Applicant respectfully renews its petition to withdraw a holding of abandonment with respect to the above-mentioned application.

FACTS

1. An Official Action was mailed on September 18, 2002, defining a shortened statutory deadline for reply of December 18, 2002.
2. On February 18, 2003, the Applicant filed the following:
 - (a) a Transmittal form;
 - (b) An Associate Power of Attorney or Agent form;
 - (c) a Petition for Extension of Time Under 37 CFR 1.136(a) (in duplicate), requesting an extension to the Response deadline to February 18, 2003; and

(d) a Response to the Official Action.

Copies of each of these documents are attached as Appendix A. The total number of pages of these documents is 11.

3. The undersigned Agent for the Applicant attests on a personal knowledge basis that the documents described in paragraph two were, in fact, transmitted by facsimile transmission on February 18, 2003.
4. The facsimile transmission contained a "Certificate of Facsimile Transmission", certifying that the correspondence was being transmitted to the PTO on February 18, 2003. In this respect, please find attached a copy of the relevant facsimile cover page, containing the Certificate of Facsimile Transmission executed by the undersigned Agent for the Applicant, as Appendix B. [Notably, the facsimile cover page includes reference to the undersigned Agent's file number T8466250US, which corresponds to the Attorney Docket Number which has been referenced throughout the prosecution of the above-mentioned application. Additionally, the cover page identified the total number of pages being transmitted as being "12". Furthermore, the addressee of the facsimile transmission is "R.W. Addie", who is the Examiner for the above-mentioned application.
5. The facsimile machine which transmitted the subject documents generated a report (i.e the sending unit's report) confirming the successful transmission of 12 pages, which corresponds to the sum of: (i) 11 pages of documents described in paragraph two, and (ii) one page for the facsimile cover sheet. A copy of the sending unit's report is attached as Appendix C.
6. As well, the same date that the subject correspondence was transmitted by facsimile, i.e. on February 18, 2003, an Auto-Reply Facsimile Transmission was received by the undersigned Agent for the Applicant from the PTO at the facsimile machine from which the subject response was transmitted. A copy of the Auto-Reply Facsimile Transmission is attached as Appendix D. Notably, the Auto-Reply Facsimile Transmission confirms the receipt of 12 pages derived from the facsimile transmission having the facsimile cover page identified on the "receipt" cover page appearing on the Auto-Reply Facsimile Transmission. Such

identified facsimile cover page is the cover page referred to in paragraph three, and a copy of which is attached as Appendix B.

7. Under 37 CFR 1.8(b), where the correspondence is considered timely filed by being transmitted in accordance with 37 CFR 1.8(a), but not received in the PTO, and the application is held to be abandoned, the correspondence will be considered timely if the party who forwarded such correspondence:
 - (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
 - (2) supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
 - (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previously timely transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.
8. CFR 1.8(b) is interpreted with reference to CFR 1.8(a). CFR 1.8(a) specifies that correspondence will be considered as being timely filed if the correspondence is transmitted prior to the expiration of the set period of time by being transmitted by facsimile to the PTO in accordance with 37 CFR 1.6(d), and the correspondence includes a certificate for the correspondence stating the date of transmission. Under 37 CFR 1.6(d), correspondence transmitted by facsimile to the PTO will be accorded the date on which the correspondence is received by the PTO, with the exception of specifically enumerated circumstances.
9. The Applicant submits that the response to the Office Action dated September 18, 2002 was timely filed by facsimile transmission on February 18, 2003 and in compliance with 37 CFR 1.8(a). The subject facsimile transmission related to correspondence which was not specifically excluded by 37 CFR 1.6(d). Further, the subject facsimile transmission contained the requisite certificate which certified the date of transmission of the subject correspondence as being February 18, 2003, as explained in paragraph three.

10. The Applicant submits that an indication on the cover page of the facsimile transmission of the nature of the transmitted correspondence, and specifically an indication that the transmitted correspondence related to an "Amendment" or "Response to Office Action", is not necessary and essential evidence for substantiating the timely filing of the subject correspondence. Notably, this is not a legislated requirement.
11. For the subject correspondence to be considered timely filed under 37 CFR 1.8(b), however, the party who forwarded such correspondence must attest on a personal knowledge basis to the previously timely transmission. The Applicant submits that such attestation has, in fact, been made at paragraph three.
12. Additionally, such attestation is corroborated by the Auto-Reply Facsimile Transmission which was transmitted by the PTO and discussed in paragraph six, ~~confirming receipt of an Auto-Reply Facsimile Transmission was received by the undersigned Agent for the Applicant from the PTO at the facsimile machine from which the subject response was transmitted.~~ A copy of the Auto-Reply Facsimile Transmission is attached as Appendix D. Notably, the Auto-Reply Facsimile Transmission confirms the receipt of 12 pages derived from the facsimile transmission having the facsimile cover page identified on the "receipt" cover page appearing on the Auto-Reply Facsimile Transmission. Such identified facsimile cover page is the cover page referred to in paragraph 3, and a copy of which is attached as Appendix B.
13. Further, the Applicant submits that such attestation is corroborated by the "report" referred to in paragraph four, confirming transmission of 12 pages to the PTO.

RELIEF REQUESTED

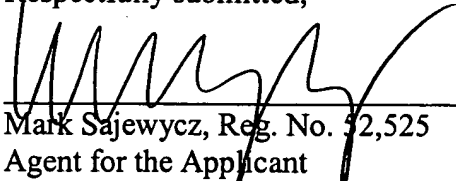
The Commissioner is respectfully requested to restore the above-identified abandoned application to pending status since the Applicant has properly submitted the Response to the Official Action.

FEE

The Commissioner is hereby authorized to charge Deposit Account No. 07-1750 for any petition fee which may be due. However, since it is believed that the holding of abandonment is the result of circumstances not attributable to any fault of Applicant or his representatives, it is respectfully suggested that no fee is due.

Applicant's undersigned attorney may be reached in our Toronto office by telephone at 416-862-5795. All correspondence should continue to be directed to our address given below.

Respectfully submitted,



Mark Sajewycz, Reg. No. 52,525
Agent for the Applicant

Gowling Lafleur Henderson LLP
Commerce Court West, Suite 4900
Toronto, Ontario M5L 1J3
Canada

[TOR_LAW5591931\2]

APPENDIX A

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number **091917.824**
 Filing Date **07/31/2001**
 First Named Inventor **Crupi**
 Art Unit **3671**
 Examiner Name **R.W. Addie**
 Attorney Docket Number **T8466250US**

Total Number of Pages in This Submission

ENCLOSURES (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Fee Transmittal Form
<input type="checkbox"/> Fee Attached
<input type="checkbox"/> Amendment/Reply
<input type="checkbox"/> After Final
<input type="checkbox"/> Affidavits/declaration(s)
<input checked="" type="checkbox"/> Extension of Time Request
<input type="checkbox"/> Express Abandonment Request
<input type="checkbox"/> Information Disclosure Statement
<input type="checkbox"/> Certified Copy of Priority Document(s)
<input type="checkbox"/> Response to Missing Parts/Incomplete Application
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)
<input type="checkbox"/> Licensing-related Papers
<input type="checkbox"/> Petition
<input type="checkbox"/> Petition to Convert to a Provisional Application
<input type="checkbox"/> Power of Attorney, Revocation
<input type="checkbox"/> Change of Correspondence Address
<input type="checkbox"/> Terminal Disclaimer
<input type="checkbox"/> Request for Refund
<input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Status Letter
<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
response to Office Action
Associate Power of Attorney or Agent |
|--|--|--|

Remarks

26912
 SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm
or
Individual

26912

PATENT TRADEMARK OFFICE

Signature

[Signature]

(Must Signify by No. 152, 125)

Date

Feb. 18/03

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Typed or printed

Signature

Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

**Associate Power Of Attorney Or Agent (37 CFR 1.34)
(For Representation Related To A Patent Application)**

Docket No.
T8466250US

In Re Application Of:

CRUPI, Frank

Serial No.
09/917,824

Filing Date
07/31/2001

Examiner
R. W. Addie

Group Art Unit
3671

Invention:

METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Please recognize the following as ☐ Associate Attorney ☒ Associate Agent in this application.

Name: **Mark W. Sajewycz**

Reg. No.: **P52,525**

Address: **Gowling Lafleur Henderson LLP
Commerce Court West, Suite 4900
Toronto, Ontario
M5L 1J3**

Tel. No. **416-862-5795**

 **Reg No. 20,775**
Signature of Principal Attorney or Agent of Record

Dated: **Feb. 18/03**

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class mail under 37 C.F.R. 1.8 and is addressed to the
Assistant Commissioner for Patents, Washington, D.C.
20231.

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

Registration Number & Address of Principal Attorney or Agent of Record

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)
(Small Entity)

Docket No.
T8466250CA

In Re Application Of:

CRUPI, Frank

Serial No.
09/917,824

Filing Date
07/31/2001

Examiner
R. W. Addie

Group Art Unit
3671

Invention:

METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of **09/18/2002** in the above-identified application.
Date

The requested extension is as follows (check time period desired):

☐ One month ☒ Two months ☐ Three months ☐ Four months ☐ Five months

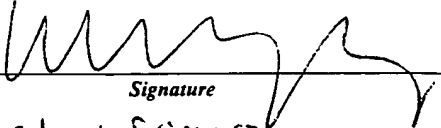
from: **12/18/2002** until: **02/18/2003**
Date *Date*

A verified statement of small entity status as a small entity under 37 CFR 1.27:

- ☐ is enclosed.
☐ has already been filed in this application.

The fee for the extension of time is **\$205** and is to be paid as follows:

- ☐ A check in the amount of the fee is enclosed.
☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **07-1750**
A duplicate copy of this sheet is enclosed.
☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. **07-1750** A duplicate copy of this sheet is enclosed.


Signature
Mark W. Sajewicz
Reg. No. P52,525

Dated: **Feb. 18/03**

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Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

CC:

Docket No.
T8466250CA

Serial No.
09/917.824

Filing Date
07/31/2001

Examiner
R. W. Addie

Group Art Unit
3671

INVENTION:

METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a response to the Office Action of 09/18/2002 in the above-identified application.

~~The requested extension is as follows (check time period desired):~~

☐ One month ☒ Two months ☐ Three months ☐ Four months ☐ Five months

from: 12/18/2002 until: 02/18/2003
Date Date

A verified statement of small entity status as a small entity under 37 CFR 1.27:

- ☐ is enclosed.
- ☐ has already been filed in this application.

The fee for the extension of time is **\$205** and is to be paid as follows:

- ☐ A check in the amount of the fee is enclosed.
- ☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account No. **07-1750**
A duplicate copy of this sheet is enclosed.
- ☒ If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. **07-1750** A duplicate copy of this sheet is enclosed.

Dated: Feb. 18/03

Signature

Mark W. Sager
Reg No. P52,525

I certify that this document and fee is being deposited on _____ with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

File No. T8466250US

February 18, 2003

In re the Application of

Applicant:	Crupi
Serial No.:	09/917,824
Filing Date:	07/31/2001
Title:	METHOD OF IN-SITU REJUVENATION OF ASPHALT PAVEMENT
Art Unit:	3671
Examiner:	R. W. Addie

Commissioner of Patent & Trademarks
Crystal Plaza 2, Lobby Level
2011 Jefferson Davis Highway
Arlington, Virginia 22202

Dear Sir:

AMENDMENT

Please amend the application as follows:

In the Claims:

Please amend claim 3 by replacing claim 3 with the following Amended Claim. A copy of the Marked-Up Claim is attached for the Examiner's convenient reference.

Amended Claim

3. (Amended) The method as claimed in claim 2, wherein, during step (e), the backhoe apparatus moves laterally relative to the asphalt paved surface connecting the blended intermediate to the entrance to the pick-up conveyor.

REMARKS

Reconsideration and allowance of the subject application are respectfully requested.

Claims 1 to 17 are pending in the application.

Claims 1, 16, and 17 are independent.

Claim 3 has been amended for purposes of consistency with claim 1, from which claim 3 depends.

CLAIMS REJECTIONS

1. Claims Rejections Under 35 USC § 112

Claims 3 to 8 have been rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant refers to as the invention. In particular, with respect to claim 3, the Examiner has objected to the limitation introduced with respect to Step (d) in claim 1. In response, the Applicant submits that claim 3 has been amended such that the subject limitation pertains to Step (e) and not Step (d). As such, the Applicant submits that claim 3 is sufficiently definite.

Claim 4 has been also rejected under 35 USC § 112, second paragraph, for failing to specifically recite an actual method step. In particular, the Examiner has objected to the fact that the limitation has been introduced with respect to the "backhoe apparatus" recited in claim 1. In response, the Applicant submits that there is no basis for such a rejection. Claim 1 specifically recites, in Step (e), "moving the blended intermediate from proximate the obstruction to an entrance of the pick-up conveyor with the backhoe apparatus." As such, it is clear that the "backhoe apparatus" is an element of the invention as claimed in claim 1. Claim 4 merely introduces a limitation with respect to an element specifically recited in claim 1. As such, the Applicant submits that claim 4 is a proper limitation with respect to an element specifically recited in claim 1 for performing "the moving" action recited in Step (e).

With respect to claims 5 to 8, because claims 5 to 8 are directly or indirectly dependent on claims 3 or 4, the Applicant further submits that claims 5 to 8 are sufficiently definite, and therefore, comply with 35 USC § 112, second paragraph.

2. Claims Rejections Under 35 USC § 103

The Examiner has rejected claims 1 to 17 under 35 USC § 103 (a) as being unpatentable over Cutler, in view of Smith et al. and Strunk. In particular, the Examiner appears to be of the view that Strunk teaches a roadway construction apparatus comprising a pick-up conveyor (20) having a backhoe apparatus (34) for feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway, and that such teaching, in combination with the teachings in Cutler and Smith et al, render the claimed invention unpatentable.

In response, the Applicant submits that claims 1 to 17 are patentable over the cited references. In particular, the Applicant submits that the combination of Cutler, Smith et al., and Strunk do not result in the combination of elements comprising the claimed invention in claim 1.

Claims 1 to 15

Claim 1 covers a method of effecting in-situ rejuvenation of an asphalt paved surface with an asphalt rejuvenating apparatus including a pick-up conveyor and a backhoe apparatus, wherein the asphalt paved surface includes an obstruction disposed therein, comprising the steps of:

- (a) heating the asphalt paved surface to form heated asphalt;
- (b) scarifying the heated asphalt to form a scarified intermediate
- (c) milling the scarified intermediate to form a milled intermediate;
- (d) blending rejuvenating fluid with the milled intermediate to form a blended intermediate, wherein a portion of the blended intermediate is deposited proximate the obstruction; and

- (e) moving the blended intermediate from proximate the obstruction to an entrance of the pick-up conveyor with the backhoe apparatus.

The Applicant submits that Strunk does not teach a person of ordinary skill in the art to use a backhoe apparatus (34) to feed roadway construction materials into a pick-up conveyor for recycling into the prepared roadway.

In this respect, the Applicant submits that Strunk's backhoe apparatus is not intended to effect removal of existing roadway construction material for subsequent recycling into a prepared roadway. Rather, Strunk's backhoe apparatus is intended for removal of non-roadway construction materials, such as earth and vegetation, to create the necessary space for roadway construction. Strunk's backhoe apparatus (34) is described in Strunk at column 4, lines 33 to 35, as being "used to remove overburden not accessible to scoop 20." The use of Strunk's backhoe in removing non-roadway construction materials is further reinforced at column 4, lines 55 to 61:

"Bucket assembly 34 can be used to excavate an overlying area to the side of the apparatus as, for instance, when profiling a hillside and to take the material removed and place it into the scoop 20. Similarly, bucket assembly 34 can be used to excavate a trench below the level of the apparatus and to lift the material into the scoop 20.

The Applicant submits that none of the material excavated by the backhoe assembly is of a roadway construction material quality. This is apparent in Strunk at column 9 between lines 1 - 9:

"Organic material such as tree stumps is not desirable in a road bed underlayment. Usually all stumps and other organic material are removed before road work begins. The present apparatus can remove small stumps and logs with the articulated bucket assembly. The bucket assembly and the scoop in conjunction with one another can uproot small stumps and the bucket assembly can lift these stumps out of the path of the present apparatus."

Rather than using the excavated material for purposes of road construction, material excavated by Strunk's backhoe apparatus is intended for disposal. Disposal is specifically contemplated in Strunk at column at lines 62 to 68:

"The apparatus may also function as a front-end loader. In this operating mode, the conveyor is stopped. Overburden, rock or unwanted material is collected in the scoop. The scoop is raised

and the vehicle is moved to the location where the unwanted material is to be deposited. The scoop is rotated so that the cutting edge is lowered, thus depositing the material."

Notably, Strunk's backhoe apparatus is, at no time, relied upon for "feeding roadway construction materials into the pick-up conveyor for recycling into the prepared roadway". Rather, roadway construction materials are scarified and collected by Strunk's scoop for subsequent processing and, ultimately, recycling. Recycling of existing asphalt road surfaces into a prepared roadway in this manner is specifically described in Strunk at column 9, lines 10 to 22:

"Another especially beneficial use of the present apparatus is in renewing asphaltic road surfaces. Generally, the old road surface must be broken up and hauled away. This necessitates laying a new base for the new pavement. Because the rock crusher is adjustable on its output side for size, it may be set to produce crushed old asphalt pavement fine enough for the new base. Chipper, breaker-type teeth are mounted on the leading edge of the scoop. The scoop simultaneously rips and breaks up the old road surface into pieces small enough to be conveyed to the rock crusher. The rock crusher reduces the size of the old pavement small enough to be used as underlayment for the new road surface."

Because Strunk's backhoe apparatus is not provided for "feeding roadway construction material into the pick-up conveyor for recycling into the prepared roadway", the Applicant submits that Strunk's backhoe combined with the teachings of Cutler, and Smith et al., does not disclose all of the elements of the invention as claimed in claim 1. As such, the Applicant submits that the invention as claimed in claim 1 is patentable over the cited references.

With respect to claims 2 to 15, claims 2 to 15 are directly or indirectly dependant on claim 1. As such, and relying on the foregoing reasons, the Applicant submits that claims 2 to 15 are patentable over the cited references.

Claims 16 and 17

With respect to claim 16, claim 16 claims, *inter alia*, the step of "... moving the milled intermediate from proximate the obstruction to an entrance to the pick-up conveyor with the backhoe apparatus."

With respect to claim 17, claim 17 claims, *inter alia*, the step of "... moving the first intermediate from proximate the obstruction to an entrance to the pick-up conveyor with the backhoe apparatus."

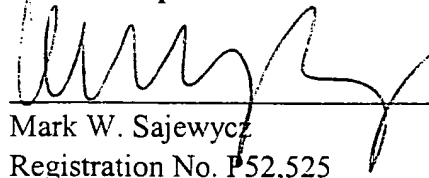
The Applicant submits that Strunk does not contemplate using his backhoe apparatus for the purpose of feeding roadway construction to a pick-up conveyor. As such, and relying on the foregoing reasons with respect to claim 1, the Applicant submits that claims 16 and 17 are patentable over the cited references.

The Commissioner is hereby authorized to charge any fees, including fees for the additional claims, which may be required to Deposit Account No. 07-1750.

Favourable consideration is earnestly solicited and, if any issues remain outstanding, the Examiner is invited to telephone the undersigned agent for the applicant at 416-862-5795.

Respectfully submitted

Frank Crupi



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February 18, 2003

MARKED-UP CLAIM

3. The method as claimed in claim 2, wherein, during step (e) [(d)], the backhoe apparatus moves laterally relative to the asphalt paved surface connecting the blended intermediate to the entrance to the pick-up conveyor.

~~APPENDIX B~~

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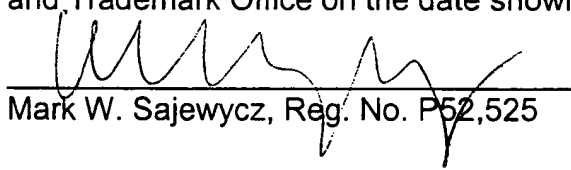
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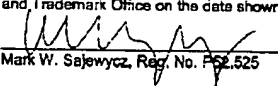
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